IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Samuel Bell, Clerk, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company.

October Term, 1902.

No. 191.

[Record No. 18,316.]

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPELLEE'S BRIEF.

In the absence of a brief for the appellant, the appellee is compelled to discuss the subject upon the lines of argument advanced for the appellant in the court below.

The purpose of the appellee was not to compel an examination of the judgment indices and cross indices in the Circuit Court of the United States for the Eastern District of Pennsylvania for the purpose of preparing duplicate dockets or books from which, in the general course of business, to make certificates. The right of examination of these indices was demanded and was accorded, under the restriction that it should be allowed only in those cases in which the appellee in the course of its business, as agent of an intending purchaser was engaged in the actual examination of the title which such purchaser, its client, was desirous to acquire. The appellant contends that no agent, or even counsel, of a

person contemplating the purchase of real estate can examine his judgment indices and cross indices. His claim is that the purchaser is compelled to make the examination through him and to pay him a fee for such examination and accompanying certificate.

In the Circuit Court, a bill was filed by the complainant (appellee), one of the three title companies in the city of Philadelphia, which transact the larger portion of the business of investigating titles to property therein situate, and of issuing policies of insurance of said titles as being free from incumbrances. The respondent was the clerk of said Circuit Court.

Antecedently to the filing of the bill, a correspondence had taken place between the clerks of the United States Circuit Court and District Court for the Eastern District and the title companies, the latter having made a general demand. Under the advice of their counsel, however, they subsequently limited this demand to a request to be permitted to examine the indices and cross indices in those cases alone in which they had been employed by actual customers to examine and pass upon titles the latter intended to take.

In order that the clerks might be apprised of the restricted demand a letter was addressed to them on the twenty-third day of June, 1896, in which it was said (Record, 5):—

> Without at present discussing the questions, which are open between us, we desire wherever we are employed to investigate the state of title and incumbrances, of customers of ours, intending purchasers or mortgagees, to ascertain whether in your office there are any incumbrances affecting the title. Will you let us know whether if we send from day to day persons representing us in such matters to your respective offices, with a view to ascertaining the existence of incumbrances, you will give our representatives thus seeking for this information access to the records and papers in your office? If you will do this we will allow other matters to remain in abeyance until such time as we shall deem it necessary to bring them to a conclusion.

The presidents of the three title companies received a reply from the clerks, dated fourteenth day of July, 1896, in which the restricted access thus demanded for the restricted purposes thus defined, was denied.

The bill was thereupon filed by the appellee, in which it averred (Record, 3):—

> II. Said company is engaged, *inter alia*, in the business of insuring titles to real estate; in making searches for liens and incumbrances against the same; in giving certificates as to the condition of such real estate as regards the existence of liens against the same in any of the courts of the Commonwealth, including the courts of the United States; and in doing, on behalf of persons contemplating purchases of real estate, all that is necessary in the way of examination of the titles thereof and for liens and incumbrances against the same.

It further averred (Record, 3):—

> V. It is impossible for the complainant to insure titles with safety, or to examine into, or to certify to its customers, the condition of the titles of, and the amount of incumbrances against, the properties they desire to acquire, without searching the said indices and cross indices of judgment records so kept by said clerk.

It further averred (Record, 3):—

> VI. The said clerk of said court, for a long time past, has been in the habit of requiring that a search should be made only by himself, to be certified by him, for which certificates he has demanded and received compensation. He has refused the complainant access to the said indices under any circumstances for the purpose of ascertaining the condition of liens and incumbrances against the properties whose title it is about to insure. This refusal has been made and persisted in, although the complainant has been at all times ready and willing to make such examination at times, and under circumstances which would not in any way interfere with the safe custody of, or convenient

use by, the clerk and those employed by him, of said indices and cross indices.

The bill stated the correspondence to which we have referred and that the complainant had demanded the right to send persons from day to day to the office of the clerk,

> to ascertain the fact of whether or not there were incumbrances, and if there were, in what form and to what extent, against properties intended to be purchased by its customers.

The refusal of the clerk to permit its representatives "seeking for such information, access to the indices, cross "indices, records and papers in his office, at such times, "and under such circumstances, as would not interfere "with the proper conduct of the business of the office of "said clerk," was averred.

The relief demanded by the bill was as follows (Record, 4):—

> (*a.*) A decree, ordering Samuel Bell, Esq., the clerk of the Circuit Court for the Eastern District of Pennsylvania, to permit the complainant, through its properly authorized representatives, from day to day, at such times and under such circumstances as will not improperly interfere with the said clerk and his assistants in the discharge of their duties, to have access to the indices and cross indices, and other books and papers in his office, showing the incumbrances against properties of which its customers are desirous of taking conveyances.
>
> (*b.*) A decree, ordering said Samuel Bell, Esq., clerk of the Circuit Court of the Eastern District of Pennsylvania, to permit properly authorized representatives of your complainant, at such times and under such circumstances as will not unnecessarily interfere with the use thereof by him and by his assistants, to have access to the judgment indices and cross indices kept by him, in such way and manner as will enable the complainant to prosecute its business, as an insurer of titles and investigator of incumbrances against properties in the city of Philadelphia, by ascertaining the judgments existing against such properties.

It will be observed that the relief demanded was access only at such times as would not improperly interfere with the clerk's use thereof, "to the indices and cross indices "and other books and papers in his office, showing the "incumbrances against properties of which its customers "are desirous of taking conveyances."

The alternative prayer was for access only at such times and under such circumstances as would not "un-"necessarily interfere with the business of the office, to "the indices and cross indices, for the purpose of enabling "the complainant to ascertain the judgments existing "against properties where in the course of its business it "will be necessary for it to insure the titles thereto or to "investigate the incumbrances against the same."

The bill demanded no general access, nor any right to take abstracts; but simply a right to access for the purpose of ascertaining for actual customers, whether or not there were incumbrances existing, shown upon the indices and cross indices, against specific properties or persons. The relief prayed for only gave to the complainant access for the purpose of enabling it to ascertain the incumbrances against properties its customers should be contemplating purchasing.

The demurrer to the bill being overruled by Judge Dallas, who was of the opinion that the complainant was entitled to examine the indices, cross indices, records and papers pertaining to judgments "for the specific purpose "of ascertaining the existence or non-existence of in-"cumbrances upon properties which its actual present "customers are intending to purchase," an answer was thereupon filed, which substantially amounted to an assertion:—

(1) That the appellee could make the necessary investigation for its customers, as to incumbrances, by paying the clerk for a certified search, (2) that it would be impossible for it "to have access to the said indices for "the purpose of said examination and inspection thereof "without seriously interfering with the safe custody of "and the convenient use by the clerk and those em-"ployed by him as well as other persons lawfully entitled

"to have access to the said indices and cross indices of "the judgment records in the aforesaid Circuit Court": and (3) that the clerk's compensation and the payment of clerical hire, stationery and other expenses connected with his office, is entirely dependent upon the fees and emoluments received by him from certifying the result of his examination of the indices and cross indices of the judgment records in his court, and that if the appellee and others "are allowed such access to and examination of "said indices and records for the purpose which com- "plainant requests the same, the office of defendant as "clerk of said Circuit Court will not be self-supporting, "and the fees and emoluments collected by him from "other sources will not be sufficient to pay him the com- "pensation to which he is entitled by law, and make "payment of the clerical hire and other expenses neces- "sarily entailed upon him, and connected with the proper "and full discharge of all his duties as clerk of said Cir- "cuit Court."

It was shown by Mr. Bonsall, vice-president of the complainant corporation, that its business is examining and insuring titles to real estate in the city of Philadelphia; that it examines as to incumbrances, and issues certificates as to the title and any incumbrances which may exist; that it issues its policies to the effect that the title is good and that no liens, judgments or other incumbrances affect it; and that it is not able to insure titles with safety without either an examination of the records of the United States Court for judgments or having certificates of search from the clerk.

He showed that the company had not been permitted by itself or by its employees to examine the judgment indices and cross indices to ascertain whether or not there were judgments affecting the titles it was asked to examine and insure.

Mr. Bonsall stated that in his opinion the time required to make all the searches required in connection with the titles his company could examine for its customers would not take over fifteen minutes per day; and that such examination could be made without in the least interfering

with the work of the office and without interfering with the safety of the books or records. He proved that his company had already made such examinations in the Courts of Common Pleas of this city, where the judgments are much more numerous, without incommoding the public or the office. He showed that the demand of his company to examine the indices had been refused, though it had offered to do it "under such regulations as "would prevent its interfering with the public or the "safety of the books."

Mr. Bonsall, of course, admitted that with certificates of search by the clerks of the courts, it could carry on its business, but said that this would entail, necessarily, upon the customers the additional cost of such searches.

Mr. Lincoln, then clerk of the District Court, was called, and testified that the official receipts of his office amounted in each of the years 1895 and 1896 to $9200, of which $4900 in round numbers came from certificates of search. He also testified that the expenses of the office for clerk hire, stationery and all other official expenses, exclusive of his own salary, amounted to about $4300. Colonel Bell, the clerk of the Circuit Court, testified to substantially the same thing.

It appeared later in the course of the proceedings, from the testimony of Mr. Bonsall, that the three title companies interested in these proceedings paid for searches to the two offices in the years 1896 and 1897, an average annual sum of $8642.62.

Mr. Lincoln, when asked why he had denied the complainant's claim of access, replied (Record, 21):—

> Because I thought that the result of it would annul the official earnings of the United States in the matter of searches or judgments, and certifying the results of same, under section 828 of the Revised Statutes, and gathering in for the United States the fees for the searches.

He testified that the three title companies could conduct their business in safety by paying to Colonel Bell and himself the costs of certified searches.

In reply to a question whether, if prayers A and B of the bill were granted, it would be possible for Colonel Bell and himself, "providing that other companies and indi-"viduals engaged in similar business to the complainant "companies" to discharge their other duties as required by law, he said (Record, 23):—

> I believe that if access were given to each of these companies and to all others desiring to have access to the indices and records of the court, it would interfere with the clerks in their attention to the duties of their office, in thus using the indices and records, as also to give access to the same to members of the bar and others visiting the offices who might require it, and I believe, if a large number of names were searched against by these companies and all desiring to make the searches, that it would require at least five or six hours' delay, and this provided that each one were ready to take up his portion of the work.

Mr. Lincoln further thought that if the access asked for by the complainant company was given to it, in connection with like access to like companies and individuals it would be difficult for Colonel Bell and himself—"I "think almost impossible"—to properly and carefully watch over the indices and cross indices and have the other duties of the office attended to.

On cross examination he admitted that the names all told, which were alphabetically subdivided, appearing in the indices, were probably seven hundred or eight hundred in each year. On cross examination he admitted (Record, 25):—

> Q. That book, of course, which contains indices and cross indices, is very frequently not in the actual physical use of any clerk? A. Very frequently. Q. There are times then, certainly half of the day, when that book containing indices and cross indices is not in use by your clerk making entries therein or searches? That is a fact, is it not? A. That is so. Q. Would there be as many as three hours in every day in which that book could be used by some

outsider, making examinations in it, without interfering with its use by you or your clerks? A. I and my clerks would have to use that book when the opportunities occurred from pauses or stops in other business in which we might be engaged. We could not be continuously employed in searches. But two of us make searches as the opportunity occurs. Q. Then, if some one else gave the book to you or your clerks, when you needed it, there would be many times during the day in which persons so giving it could look into it, without interfering with you or your clerks? Is that not so? A. That is so provided it could possibly be arranged that one person only, and not a dozen or fifteen, might be wanting to look at it in general. Q. Could not, then, a person waiting the convenience and necessities of yourself and your clerks, look at that book frequently during the day, if he regarded such use as a convenience by you, without interfering with you or your clerks, and yet seeing what was in the book? A. Any person waiting in the office during the entire day could find such opportunity. Q. There are many times during the day, are there not, when that book is lying unopened and unused? A. There are. Q. Mr. Bonsall has said that all the searching required by the three title companies who addressed the communication to you, could be done taking up half an hour of each day. What is your judgment as to that fact? A. They have had an average, say of fifty names a day to make search against, and in both ends I think that it would take them, for five men, about two hours and a half of each day. This is also without counting the pauses when the name searched against should occur and require examination, and without the delays incident to interruption of such clerk in the work by any other person desiring to look at the index. Q. Suppose that the three title companies were willing to take up thirty minutes of each day, to make their searches, undertaking to hand the book upon the instant of demand for use by yourself or any of your clerks, not taking the thirty minutes continuously, but in the intervals when you did not need to use the book,

would that interfere in any way with the work of the office? A. In itself, as thus stated, probably that can be done without interference, but as there are other persons and corporations that might also want to do the same thing, to provide for such a contingency would be an interference. Q. Are not the three title companies I have named customers for at least five-sixths of the searches which you certify?

A. I have not the means of saying what the amount of their searches are, because I do not keep a separate account of each party making searches; the average amount of searches is about nine hundred. Mr. Bonsall now pays me in check, and their amounts in check would proportion in the business more than I could state. Q. Do the three companies pay the two offices $9000 a year for searches? If so, that will make about what proportion of all the receipts during the year from searches in the two offices? A. Well, they do not pay any such sum as that. They pay the two offices together, say, $8900, instead of $9000. I had the impression they did not pay us over $3000 apiece.

Mr. Lincoln further testified (Record, 27):—

Q. Do you not have time with intervals when the index book is not used, to respond to all demands by the three title companies for certificates of search? A. For the three title companies alone if there were not other persons. Q. But you do now have plenty of time to respond to certificates of search from all quarters, do you not? A. We meet every request that is made for searches, and also meet every request to look out the indices. Q. And doing this, there are still very considerable intervals of time when the index book is not being used? A. Very true.

Colonel Bell testified (Record, 30):—

Q. If the prayers A and B should be granted, would it be possible for you and your assistant clerks to perform the other duties which you are required to perform by the various Acts of Congress?

A. Not without very great difficulty and inconvenience. Q. What would be some of the difficulties and inconveniences that might arise? A. The difficulties, if those prayers were granted, would be that they would interfere with the examination by our clerks, not only of the searches that have been ordered, but also other inquiries that are made from us in relation to the matters connected with the same things and with the books of the office. * * * Q. How many clerks have you now in your employ? A. I have four, two specially assigned to making searches for judgments and liens.

Colonel Bell further testified (Record, 31):—

Q. Why did you refuse access to this complainant company of the indices and cross indices? A. Because we thought it would interfere with the collection of fees which are due the United States for making these searches.

Colonel Bell further testified (Record, 32):—

Q. Your book of indices and cross indices is kept in the District Court office, is it not? A. It is kept in the District Court office. Q. And the clerk who has charge of making the searches in the District Court indices also makes them in your indices? A. The clerk who searches makes out the certificates. Q. Who signs them, that clerk or some other? A. That clerk signs for me. Q. So that the same clerk signs for you and for Mr. Lincoln? A. The same clerks we have.

Upon being asked as to the length of time being consumed by the clerks in the searching, Colonel Bell testified (Record, 32):—

Q. About how much of his time, do you think, is occupied during the day in looking into or making entries in your indices book? A. I think about three hours a day is occupied by each of them, one in making out the certificates and one in making searches. Q. An hour a day, then, in making the actual searching in the book? A. Three hours, with the

> interruptions that he has from time to time. Q. The office is open from nine until four? A. Yes, sir. Q. If forty-six forty-ninths of the work of searching was done by somebody else, there would be a relief to that extent of his use of the book, would there not? A. If it was done by somebody else, undoubtedly. Q. Then, if the title companies were to do the searching for themselves to the extent that you do it now for them, the clerk would be relieved? A. Relieved to a certain extent, undoubtedly. Q. I have now before me the book of current indices running back to 1883. It is a book of about two hundred and fifty pages, would not you say? A. I suppose that is about the size of it. * * * Q. About how many entries are made a day, would you say, in this indices book? A. I cannot tell. Some days more, some days less, and some days none at all. Q. Not an average of more than five a day, do you think? A. No; not an average of more than five a day.

It will be observed that the clerks of the courts testified as to the length of time consumed in the use of the indices books without any accurate observation and vaguely. John E. Barry was therefore instructed to make an actual observation of the extent of the use of these books. He was in the District Court office, where the indices and cross indices for both courts are kept, on the 29th December, 1898, from 9 A. M. until 3 P. M., with an interval of thirty-five minutes for lunch. On the third day of January he was at the same office from 10.30 A. M. until 3 P. M., with an interval of twenty-five minutes for lunch. He testified that there was only one clerk of the office who used the books and who made examination in both sets. The name of the clerk was Murphy. Barry testified (Record, 34):—

> On the 20th of December, Mr. Murphy used the indices from 10.35 to 10.37, two minutes, and from 1.10 to 1.25, fifteen minutes. That was all that day they were used by the clerks in the office. Q. Did you notice their use generally by anybody? A. They were only used one other time by an outside party.

> Q. And for about how long? A. For twenty minutes. Q. That constituted the use of those two sets of indices during that day? A. Yes, sir.

The same witness further testified that on the third day of January the books were not used at all by any clerk in the office and that an outside party used them for five minutes between 1.40 and 1.45. He testified that during the whole time the clerks were engaged in the office at their desks.

Austin R. Cadwallader, who had experience in seaching in the Court of Common Pleas, and who was an expert upon the subject of the amount of time required for searching, testified (Record, 36):—

> Q. I wish you would tell us how long it would take in each day to make all the searches that are required for those three companies in both judgment indices? A. Sixty minutes. Q. Would that be amply sufficient? A. Fully.

Another expert, William Smith, testified (Record, 36):—

> Q. Tell us how long a time it would require to make all the searches for those three companies in both sets of indices each day. A. I think that with the names arranged in the order in which we generally arrange them, I could do it inside of an hour or very little over.

It will be observed that in the very careful letter written by the clerks of the courts on the 14th July, 1896, in which they refused access to the complainant, they put their refusal solely upon the ground of the interference with the collection of fees for searches which such access would give. They said nothing whatever about the inability to conduct the business of the office.

In view of the testimony which we have excepted at such length, it is impossible to reach the conclusion that the access allowed to the title companies can interfere in the slightest degree with the business of the office.

With an average of five entries per day made in the indices in the office of the Clerk of the Circuit Court, and

with the average of entries most probably less, made in the indices kept by the Clerk of the District Court, the use of these indices for making entries therein could not be interfered with by any examination the public might require.

It appeared that almost all the searching was done for the three companies concerned in this litigation, and that it could be done easily in the course of an hour in each day. If this searching should be done by the companies it would save almost all the searching now done by the clerks.

It was proven beyond all shadow of doubt that no possible official use could be interfered with by granting the relief prayed for by the bill. This relief was asked for in such a guarded manner that its grant could not interfere with the proper use of the books by the clerks.

The case was heard upon bill, answer and proofs; a decree (Record page 40) was thereupon entered by his Honor Judge Dallas, in which he ordered the Clerk of the Court to—

> permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the Circuit Court of the United States for the Eastern District of Pennsylvania, in such way and manner as will enable the complainant to prosecute its business as insurer of titles; but subject to the following restrictions:—
>
> 1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; (2) Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices.

Thus restricted, the appellee is permitted to make no examination of the indices or cross indices, except for

the purpose of enabling it to certify to an actual customer the state of the judgments against a title proposed to be taken by him in a transaction current and depending.

Such restriction and examination must not be permitted to interfere with the clerk or his assistants in the discharge of their work, and must not be so exercised as to interfere with the right of other persons to access.

The question, therefore, presented to this Court is: Whether a person, about to take title to real estate and obliged to inform himself concerning the existence or non-existence of liens against the same, can make this examination through a person or corporation conducting for him the business of examining the title of the property about to be purchased and the condition of the incumbrances against the same? Must the person who is obliged to have examination made of the indices and cross indices, under penalty of taking property subject to liens thereon, make the examination himself, or must he, after employing a person or corporation skilled in the business, order from the clerk a certificate of search without any opportunity to avail himself of the services of the skilled person or corporation employed by him in making such examinations?

Under the statutes, every judgment entered in any of the indices or cross indices of the Circuit Court or of the District Court of the United States, is a lien upon the property of the real estate substituted therein at the time of the entry of judgment. Every purchaser is charged with notice of the existence of such liens. It is therefore his duty to examine the same. Surely, this duty can be delegated by him to some one familiar with the subject and willing to guarantee the result.

We are not dealing with a class of cases cited in the Court below by the counsel for the appellant where title companies assert their right to copy bodily the books of record of the courts for the purpose of using the same thereafter in the course of future business. Grant that the right of inspection and examination is limited to some person interested therein, and still we have in the pres-

ent case a demand for such inspection and examination by some one whose duty it is, as the agent of the person taking title, to ascertain the condition of the latter.

It may be that a right to inspect and examine does not carry with it a right to copy and reproduce. The latter right was not claimed by the appellee, and was not accorded.

In the court below, Beam *vs.* The People, 7 Colorado Rep., 200, was cited, but in that case, which was one of *mandamus*, the relators appealed to "the right under the "law to examine and abstract the entire records of Gun- "nison County for the sole purpose of securing future "private emolument from the sale of abstracts thus ob- "tained." The court said that the business of the relators was permanent, and that to carry on the same successfully, they would be obliged, not only by themselves or agents, to occupy the clerk's office for weeks, perhaps months, in abstracting the records already recorded; but they must be there daily thereafter abstracting the conveyances filed from day to day.

The court put its opinion upon this statement:—

> They did not seek information concerning a tract of land in which they themselves, or parties whom they represent, have or expect to have an interest.

In the case of Newton *vs.* Fisher, 98 No. Car. Rep., 20, also cited in the court below, the court refused the right to make copies or abstracts

> of the entire records of the office, including those instruments in which the person so desiring to make abstracts, &c., is not at the time interested, but simply anticipates that he will be at some time interested, and abstracts of which he desires to make for mere speculative purposes.

The court said:—

> Under this view the plaintiff would be entitled to every facility for the legitimate prosecution of his business by access to the records for the examination of instruments registered, but the court is not satis-

fied of his right to make an abstract of all transfers of real and personal property for the year 1896 without having an interest in the same for the prosecution of his business or paying any fee therefor.

In the case of Buck & Spencer *vs.* Collins, 51 Georgia, 391, also cited in the court below, the right which was denied was that of examining the books of record of the Superior Court "for the purpose of making a full abstract "of the contents thereof, from the clerk's books for pub-"lication."

In the court below, a case was referred to, never reported, concerning the facts of which there is considerable doubt, purporting to have been decided by the late Judge Gresham. What appears to have been done in that case was to enjoin a title company, or law firm, which had made private indices from the public records of the clerk's office, from using the same. It does not appear, with any clearness, or definiteness what had been done. It is very apparent, however, from what is stated in the report of that case as given in the court below, that no right of inspection and examination of records for the purpose of ascertaining a client's title, was refused.

It was said in the court below that an Act of Congress authorized the clerks to charge certain sums for certificates of search, and that without the emolument derived from this source, the office receipts would be insufficient to meet the office expenditures. In view of the fact that the statute compelled the clerks to allow the inspection and examination of the records, it is difficult to gather from a permission to charge a fee to those who wish certificates signed and sealed by the clerk, a compulsion upon those who have the right to inspect and examine, to pay for such certificates where they do not wish them, and to lose the personal right conferred by the statute.

If the compensation allowed by the statutes of the United States is insufficient to support the expenditures of the office, the remedy must be found in additional legislation. It cannot be accorded by the courts by making absolute a denial by the clerks of a right of examination expressly conferred.

Section 828, Revised Statutes, provides:--

> All books in the offices of the clerks of the Circuit and District Courts containing the docket or minutes of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

The Act of 1st August, 1888, chapter 729, page 602, first supplement Revised Statutes, second edition, section 2, reads:—

> That the clerks of the several courts of the United States shall prepare and keep in their respective offices, complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

The right of inspection and examination which is given by the statute, is one to the "public" generally, without restriction against any portion of the public and without any requirement that the public demanding the inspection shall be interested in the matter. The dockets and minutes, which are ordered to be open to the inspection, are to be "open" to the inspection of any person desiring to examine the same.

It would be very difficult to find a ground for refusal of the right of inspection, because of the person demanding the same having no personal interest in the matter. Certainly, under these broad words of grant, there can be no denial of the right of inspection to some one interested in making the same, in order that he or it may perform for a client a duty necessary to be performed, which the latter is hardly competent to perform for himself.

No man in Pennsylvania can purchase property without being bound to take notice of all judgments entered in the offices of the United States Circuit and United States District Courts. It is incumbent upon him to examine such records before he can deal with the owner. Many men would be unable to make such examination personally.

Titles are always examined by persons skilled in such business. The title companies perform the duties of conveyancers. They examine titles and, as a part of their general duty, make searches.

No Act of Congress has ever compelled a person having a right to examine the records to take a certificate of search. To compel a man to purchase property, at the risk of finding the same subject to incumbrances, and to deny him the right to go to the records himself, in person, or by his agent, to see whether incumbrances exist, would be absurd.

In Lum *vs.* McCarty, 39 N. J. Law, 287, Lum was employed to search a specified title, and the Court of Errors and Appeals held that he had a right of access to the records in the court's office, without the paying of fees to the clerk.

In Barber *vs.* West Jersey Title and Guaranty Company, 32 Atlantic Reporter, 222, the same court dealt with the case of a title company which "claimed the right to "have free access to the public records and files in the "office of said county clerk, daily during the ordinary "business hours of each business day, for the purpose of "inspecting and making abstracts therefrom, and mem-"oranda of the contents thereof." It reversed the decree of the Chancellor which had awarded an injunction in favor of the company, saying:—

> The case of Lum *vs.* McCarty carries the right of the public to its extreme limit. The respondent, by force of its incorporation, has the same right to inspect the public records which may lawfully be exercised by an individual. Every person, without legislative authority, may engage in the business of examining and guaranteeing titles as fully as this company is empowered to do by its Act of incorporation. When such a person or a company with such authority is employed to examine and guarantee a particular title, the clerk, upon demand, is bound to give access to the records for that purpose, subject to reasonable rules and regulations.

These decisions in New Jersey were made under legislative provisions which, whilst they gave access to the books to every person in proper season, coupled with it the following:—

> And be entitled to transcripts from the same on paying the fees allowed by law.

In a foot note of Uhle to 29 Am. Law Register, N. S., page 60, most of the decisions of the different courts are summarized.

In People *vs.* Richards, 1 Northeastern Reporter, 258, it was held:—

> The register of deeds of Kings County having denied to the agent of a company copying the records in his office the right to keep such a number of men employed in such copying as would obstruct the public business, but having permitted such company to keep three men so employed in his office, properly, upon the introduction of a fourth man, who was represented as the employee of another company, denied the use of such office to the latter; the two companies being known by such register of deeds to have the same officers, and suspected by him to be in effect one and the same company.

The court said:—

> Under the laws applicable to the register of Kings County, he is the custodian of all the books and records in his office. But it is provided that such records shall "at all proper times be open for the "inspection of any person paying the fees allowed by "law."
>
> These records are therefore public records, which every person has a right to inspect, examine and copy, at all reasonable times, in a proper way; and the register cannot deny access to his office or to the books for such purposes, to any person coming there at a proper time and in an orderly manner. But he must necessarily have control of his office and of the records, and must have some discretion to exercise as to the manner in which persons desiring

to inspect, examine and copy the records may exercise their rights. He must transact the current business of the office, and allow all persons reasonable facilities to exercise their rights in his office. He cannot give the right to one person or one corporation to occupy his office to the exclusion of others; and each person must exercise his rights in the office consistently with the exercise of similar rights by others. It is clear that this relator could not properly put twenty-five or thirty men into the office, and thus block up the office and interfere with the register in the discharge of his duties. He must have some right to say how many persons the relator could send there to work at one time.

In Day *vs.* Button, 56 Northwestern Reporter, 3, it was held:—

It is sufficient to say that relator asks the privilege of examining all records and files in the office and of making memoranda therefrom, for the purpose of making a set of abstract books. The respondent refused this privilege on the ground that the public convenience would be interfered with thereby. He offered the privilege of making an abstract or search or of copying any instrument recorded, but declined to allow him and his assistants to work continuously at the table provided for use of the public, claiming that it was being monopolized by them to the exclusion of the public. * * * The record seems to warrant the conclusion that respondent denies the right of relator to the use of the records, and a place to make memoranda for a set of abstract books, upon the ground that he has no legal right to the same. If the case of Webber *vs.* Townley, 43 Mich., 534, 5 N. W. Rep., 971, justifies this contention, we think the decisions of this court in the cases of Burton *vs.* Tuite, 78 Mich., 363, 44 N. W. Rep., 282; 80 Mich., 218, 45 N. W. Rep., 88, have overruled the case of Webber *vs.* Townley and established the right of a person to look at the records and make memoranda for a set of abstract books. This right does not permit the register to be unduly annoyed by a large force, or

by work at unseasonable hours, or by the monopoly of furniture, office room or records to the exclusion of other persons, or with his rights to prescribe a reasonable use of the same. It does, however, require that he recognize relator as one of the public and accord to him reasonable privileges for the accomplishment of his purpose.

In State *vs.* Rachac (Minn.), 35 N. W. Rep., 7, the syllabus reads:—

> The right to inspect the public records and papers in the office of the register of deeds, "either for ex- "amination or for the purpose of making or com- "pleting an abstract or transcript therefrom," given by Gen. Stat. Minn., 1878, C. 8., section 179, * * * is not limited to those having some interest in such records.
>
> Those who are in the business of making and furnishing abstracts of title to others for completion are entitled to this right for the purpose of making or completing their tract indexes, subject, however, to such reasonable rules as the register of deeds may prescribe to secure the safety of the public records.

In Burton *vs.* Tuite (Mich.), 44 N. W. Rep., 282, the Act of Michigan provided that all custodians of records shall furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices, and for making memoranda or transcripts therefrom during the usual business hours to all persons having occasion to make examination of them for any lawful purpose.

It was held that plaintiff's business, being that of making abstracts of title and furnishing the same to those wanting them for a compensation, was as legal as that of a lawyer or real estate dealer, and that it was entitled to full access to the records.

In Hanson *vs.* Eichstaedt (Wis.), 35 N. W. Rep., 30, an access was allowed for the purpose of making abstracts, but the statute there provided that the register should "permit any person so examining to take notes and copies "of such books, records or papers, or minutes therefrom."

In the court below, much stress was put upon the fact that after examining any special title for the purpose of ascertaining the condition thereof and the liens against the same, the appellee, as part of its corporation business, issues certificates. The duty performed by the appellee is that of examination of title for a client. The same duty would have been performed, under the old regime, by a lawyer or conveyancer. The fact that the corporation performing it issues a certificate, or policy, for which it is paid and which renders it liable for negligence or for mistake, however arising, cannot affect the legal right. Every person taking a title has a right to cause the same to be examined and to take whatever assurance can be legally given him by an individual or corporation.

The sole question for consideration is, whether or not a person or corporation undertaking for a client the duty of ascertaining the condition of a title and the incumbrances against the same is entitled to a personal examination, without paying for a not desired certificate of search by the clerk?

The answer to this, we submit, is given, in the clearest and most unequivocal form, in the statutes we have quoted.

It is hardly necessary to consider the rather strained apprehension entertained by the clerks, of interference with them in the discharge of their duties, in view of the fact that the decree puts upon the right to inspect a condition that it shall not thus interfere.

As we have shown, by the citations we have made from the testimony, there can be no interference, by any inspection or examination that will be necessary, with the discharge by said clerks in the fullest possible manner of their duty.

In the brief which accompanied the petition for allowance of a *certiorari* it was said that the question "is "the right of a corporation engaged in the business of "insuring titles of real estate to have access to the records "of the court for the purpose of selling the information "thus acquired for profit." The question actually presented is, the right of a person acting in a particular

transaction for a purchaser obliged to take notice of liens against a property intended by him to be acquired, to make, on behalf of such purchaser, an examination, of what the court records show as to such liens. Every conveyancer or lawyer who makes an examination for his client thereby acquires a "profit;" but such "profit" is one which results from the exercise of his profession or vocation. No right is claimed "to divert the revenues "of the Government and to discharge the duties of the "clerks of the courts." The Government has no right to the revenue resulting from the examination by a purchaser or his agent of the court records. It is not rendered obligatory upon a purchaser to rely upon the clerks of the courts for making an examination he is entitled to make for himself.

If a purchaser desires the security of a certified search by the clerk of the court, he can only obtain the same upon the payment of a certain fee. If, however, he does not care for such security, there is no obligation upon him, either to demand the certificate, or to pay therefor.

In the application for the *certiorari* it was stated that Section 828 of the Revised Statutes did not mention, amongst the books which were to be open to the inspection of any person desiring to examine the same, the judgment indices and cross indices. It was conceded herein that the Act of 1st August, 1888, (25 Statutes at Large 357; Supplement to R. S. Vol. 1, 2nd Ed. page 602), enacted that judgments and decrees rendered in the Circuit and District Courts should be liens on the property throughout the State in which the judgments were rendered, and that it compelled the clerks of the several courts to prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records thereof, and that "such indices and "records shall at all times be open to the inspection and "examination of the public." It was suggested that the words, "without any fees or charge thereof," were purposely omitted, because similar words had been used in section 828.

A failure in a later statute to repeat an unnecessary

provision grounds no implication of intention. A direction that indices shall be kept which shall at all times be open to the inspection and examination of the public necessarily excluded any right to charge for an inspection and examination made a matter of right.

It was further suggested in the application for the *certiorari* that a person entitled to examine a public record must have "some direct interest in the particu- "lar record sought to be inspected or copied." This suggestion is not in accord with a direction to allow access to "the public" without restriction or limitation. The purchaser, ignorant of the proper method of examining what is necessary for him to know, is entitled to whatever assistance is required for the full exercise of his right.

It is unnecessary, however, to consider whether "the "gratification of mere curiosity" is allowed under an unlimited direction to permit public inspection and examination. An examination in the present case was demanded for the benefit of one who had an interest in the subject matter. It was not demanded "for purposes of private "gain;" but, for the purpose of enabling a purchaser, bound to take notice of what appeared in the indices and cross indices, to ascertain facts of which he was obliged to take notice, through a properly constituted agent. It would be necessary for him to pay such agent for his services, and the fact that the agent was thus paid did not militate against the principal's right of inspection, in person and by proxy.

The decree in the court below did not accord a right to make copies or abstracts. No such right was demanded. It merely gave permission to inspect and examine with reference only to a transaction or transactions at the time being current or depending, under such circumstances as would not interfere with the clerks or their assistants in the discharge of their duties, or with the exercise of the right of other persons to have access to said indices and cross indices.

JOHN G. JOHNSON,
For Appellee.